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09/138,666	08/24/98	PONTON	T 6388-0317-3

QM01/0727  
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EXAMINER

KEASEL, E

ART UNIT

PAPER NUMBER

3754

DATE MAILED:

07/27/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/138,666**

Applicant(s)  
**Thierry Ponton**

Examiner  
**Eric Keasel**

Group Art Unit  
**3754**



☒ Responsive to communication(s) filed on 27 Jan 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-28 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-3, 5-13, 17, 18, 21, 24-26, and 28 is/are rejected.

☒ Claim(s) 4, 14-16, 19, 20, 22, 23, and 27 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on 24 Aug 1998 is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because:
  - a. in figure 3a, "31" does not point to the "annular intermediate component",
  - b. in figure 3a, "26" does not point to the "transverse side",
  - c. in figure 3b, "29" does not point to the "opening",
  - d. in figure 2, the area near call out "30" does not match the cross sections in figures 3a, 3b, and 4.

Correction is required.

### ***Specification***

2. The disclosure is objected to because of the following informalities:
  - a. on page 11, line 3, "conduit 35" should be "conduit 41",
  - b. on page 9, line 19, "15" is "bottom", not "stopper",
  - c. on page 9, line 22 and page 10, line 13, "12" is "reservoir"; elsewhere in specification and claims, it is "first space",
  - d. on page 10, lines 15 and 16 and page 12, line 19, "13" is "upper space"; elsewhere in specification and claims, it is "second space",
  - e. on page 12, line 1, spell out "EPDM".

Appropriate correction is required.

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***Claim Objections***

3. Claims 24 through 26 are objected to because of the following informalities: some words are missing in the first line of the claim 24; "...wherein sais at least two..." should read "...wherein said attached bottom forms at least two...". Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 18 and 24 through 26 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The use of the term "self-tightening" is not defined in the specification and it is unclear how a shell would tighten itself onto the body (claim 18) or how a second sealing zone would be formed by a "self-tightening" mounting (claims 24 through 26).

6. Claims 5 through 7 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. As written, it appears that two elements that should be non-flexible are part of a

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single molded unit with a flexible member (the conduit). It is unclear how this is accomplished or if this is what is intended.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 17 recites the limitation "rigid or semirigid annular part of the protective element" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim. It appears the reference to "claim 4" in line 1 should read "claim 16".

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 3, 9, and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by de Freitas. Re claim 1, de Freitas discloses a container with a reservoir and a pump surmounting the reservoir. The fixed spout 15 is the fixed outlet element, the flexible pipe 19 is the flexible

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connection, the actuating button 24 is independently mounted from the fixed body. Re claim 3, the insulating plate 39 is the partition dividing the first and second spaces. The pump is mounted in the partition, and the actuating element, the outlet element and the conduit are all present. Re claim 9, the outside container 37 is formed of a single piece. Re claim 11, the pump is offset relative to an axis of the body. Re claim 12, the actuating element has an internal duct (L-pipe 25) opening to the conduit, an intake tube (transference pipe 40) into the first space, and a hollow outlet stem (tip 23), with the stem being in communication with the internal duct. Re claim 13, the outlet element is substantially at the same axial level as the outlet stem.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 2 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over de Freitas in view of Andris. De Freitas teaches the claimed subject matter in claim 1 as shown above in paragraph (¶10). However, de Freitas fails to teach the subject matter in claims 2 (the outlet element is a nozzle) and 8 (the conduit is bellowed). Andris, for the same subject matter as in the instant claim, teaches the use of a dispensing nozzle 4 in the outlet element and the use of bellows 3 for flexibility.

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Using a dispensing nozzle in the spout of de Freitas would allow for varied discharge of the substance. Therefore, it would have been obvious to one of an ordinary skill in the art to use the teaching of Andris in the system of de Freitas at the time the invention was made to allow for a nozzle as the outlet element.

Using a bellowed tube as the flexible member of de Freitas would still allow for movement of the actuating element without moving or changing the orientation of the outlet element. Therefore, it would have been obvious to one of an ordinary skill in the art to use the teaching of Andris in the system of de Freitas at the time the invention was made to allow for the flexible conduit to be of a bellowed design.

13. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over de Freitas in view of Clements. De Freitas teaches the claimed subject matter in claim 1 as shown above in paragraph (¶10). However, de Freitas fails to teach the subject matter in claim 10 (the body being a molded thermoplastic material of polypropylene or polyethylene terephthalate(PET)). Clements teaches the use of a PET as the material for a crack-proof and resilient article for containers such as cups.

Using PET as the material for the body of de Freitas' design would allow for the body to serve as a reservoir. Therefore, it would have been obvious to one of an ordinary skill in the art to use the teaching of Clements in the system of de Freitas at the time the invention was made to

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allow for PET as the material for the body. Further it is well known in the art to use this material for pump container bodies.

14. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over de Freitas in view of Gueret. De Freitas teaches the claimed subject matter in claim 3 as shown above in paragraph (¶10). However, de Freitas fails to teach the subject matter in claim 21 (the body having an attached bottom). Gueret, for the same subject matter in the instant claim, teaches the use of an attached bottom to a liquid dispenser

Using an attached bottom allows material to be inserted into the reservoir from the bottom. Therefore, it would have been obvious to one of an ordinary skill in the art to use the teaching of Clements in the system of de Freitas at the time the invention was made to allow for PET as the material for the body. Further, it is well known in the art to use this material for pump container bodies.

15. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over de Freitas in view of Brattoli et al. De Freitas teaches the claimed subject matter in claim 1 as shown above in paragraph (¶10). However, de Freitas fails to teach the subject matter in claim 28 (the product being pharmaceutical, dermo-pharmaceutical, or cosmetic). Brattoli et al, for the same subject matter in the instant claim, teaches that the product can be soap (a pharmaceutical product) or any alternative product.



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Any pharmaceutical, dermo-pharmaceutical, or cosmetic can be used in this dispenser. Therefore, it would have been obvious to one of an ordinary skill in the art to use the teaching of Brattoli et al in the system of de Freitas at the time the invention to allow for any pharmaceutical, dermo-pharmaceutical, or cosmetic product.

***Allowable Subject Matter***

16. Claims 4, 14-16, 19, 20, 22, 23, and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Baudin discloses duplicate injection molding of polypropylene and SEBS

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Keasel whose telephone number is (703) 308-6260.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver, can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3588.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

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July 19, 1999

  
KEVIN P. SHAVER 7/23/99  
PRIMARY EXAMINER  
GROUP 3700